

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

SAMI AMIN AL-ARIAN, et al.

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**MOTION OF MEDIA GENERAL OPERATIONS, INC.  
FOR LEAVE TO INTERVENE, TO UNSEAL MOTIONS,  
FOR ACCESS TO SCHEDULED EX PARTE HEARING**

Media General Operations, Inc., d/b/a *The Tampa Tribune* (“Tribune”), seeks leave to intervene in this case for the limited purposes of (1) unsealing the Motions to Withdraw as Counsel Under Seal and Ex Parte (Docs. S-31, S-32), and (2) seeking access to the hearing, scheduled for Friday, January 27, 2006, at 11:00 a.m., on the Motions to Withdraw, portions of which are set to be conducted *ex parte* and *in camera*. Grounds for this motion are set forth in the following memorandum.<sup>1</sup>

**MEMORANDUM OF LAW**

This motion concerns the Motions to Withdraw as Counsel and the hearing scheduled on those Motions. Both Motions to Withdraw were filed under seal. On January 24, 2006, this Court issued a Notice of Hearing setting a hearing on the Motions to Withdraw for Friday, January 27, 2006, at 11:00 a.m. The Notice of Hearing states that “[p]ortions of this hearing will be conducted *ex parte* and *in camera*.” Based on the Notice of Hearing, it is apparent that

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<sup>1</sup> As a member of the news media, the Tribune – a daily newspaper – has standing to intervene for the limited purpose of seeking access to judicial proceedings. See, e.g., United States v. Ellis, 90 F.3d 447, 449 (11th Cir. 1996); Newman v. Graddick, 696 F.2d 796, 800 (11th Cir. 1983).

reporters for the Tribune will not be permitted to be present during the hearing. Because the Motions to Withdraw were filed under seal, the Tribune does not know the grounds for the Motions, but it intends to have a reporter present at the hearing and to report on the Motions to Withdraw.

### Argument

“What transpires in the courtroom is public property.” *Craig v. Harney*, 331 U.S. 367, 374 (1947). Federal courts have long recognized the presumption of access that attaches to criminal proceedings. Indeed, a trial is “a public place where the people generally – and the representatives of the media – have a right to be present.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 578 (1980). As the Eleventh Circuit has explained, “open proceedings may be imperative if the public is to learn about the crucial legal issues that help shape modern society. Informed public opinion is critical to effective self-government.” *Newman v. Graddick*, 696 F.2d 796, 800 (11th Cir. 1983).

Likewise, the public enjoys a presumptive right of access to materials filed with the Court. Whether this access is seen as a common law principle, *see Newman*, 696 F.2d at 802-03, or a First Amendment doctrine, *see Associated Press v. United States District Court*, 705 F.2d 1143, 1145 (9<sup>th</sup> Cir. 1983), the access right may be abridged only if the Court determines that closure serves a compelling or substantial interest and is no greater than necessary to serve that interest. *Newman*, 696 F.2d at 802; *United States v. Brazel*, 102 F.3d 1120, 1155 (11<sup>th</sup> Cir. 1997). As the Eleventh Circuit has explained:

Once a matter is brought before a court for resolution, it is no longer solely the parties’ case, but also the public’s case. Absent a showing of extraordinary circumstances set forth by the district court in the record consistent with [*Wilson v. American Motors Corp.*, 759 F.2d 1568 (11<sup>th</sup> Cir. 1985)], the court file must remain accessible to the public.

*Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013, 1016 (11<sup>th</sup> Cir. 1992). *See also United States v. Corces*, No. 92-82-CR-T-17B, 1997 WL 447979 (M.D. Fla. July 28, 1997) (“First Amendment right includes the right to access transcripts, motions, orders, and other court documents.”).

Strict limitations are placed on courts considering closure of court proceedings. First, before a court may close a hearing the public must have notice and an opportunity to be heard on the proposed closure. *U.S. v. Valenti*, 987 F.2d 708, 713 (11th Cir. 1993). Second, in order to justify a closure order a court must articulate specific findings that “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.*; *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14 (1986). Indeed, even if a closure is only partial (*e.g.*, some spectators are allowed to be present), a court still must “hold a hearing and articulate specific findings.” *See Judd v. Haley*, 250 F.3d 1308, 1315, 1320 (11th Cir. 2001) (“Both partial and total closures burden the defendant’s constitutional rights”).

Here, the news media were not give notice prior to the decision to conduct portions of the hearing *ex parte* and *in camera*. As a result of the Notice of Hearing, of course, the Tribune now is on notice and has moved to intervene. Still, no justification has been articulated for closing portions of the hearing, and no findings were made on the record to support closure, as required by Eleventh Circuit precedent. Similarly, no findings were made on the record to support sealing the Motions to Withdraw.

Therefore, at the hearing on January 27, if this Court is going to consider closing any portion of the hearing, it should first hold a hearing and make findings of fact that closure is necessary to preserve higher values and is narrowly tailored to serve that interest. The Tribune requests an opportunity to be heard prior to any decision to close portions of the January 27

hearing. Because the Motions to Withdraw were filed under seal, the Tribune does not know the bases for the Motions. Inasmuch as the Motions are based on the non-payment of attorney's fees, however, that matter is not privileged and would not provide a factual basis for closing the hearing. *See, e.g., In re Grand Jury Matter No. 91-01386*, 969 F.2d 995, (11th Cir. 1992) (information relating to attorney's fees is not generally privileged). Additionally, issues concerning counsel's health have also been raised. However, these issues have already received publicity in the media.

Moreover, after conducting a hearing, if the Court is inclined to close any portion of the proceedings, the Tribune requests that the Court consider whether it can make an informed decision on the Motions to Withdraw on the papers, without having to hear argument or testimony *in camera*. If the Court determines that it must consider genuinely privileged or confidential material *in camera*, the Tribune requests that any closure order be narrowly tailored to encompass *only* the testimony and argument that reveals the substance of the privileged and confidential information.

It is important that courts ensure that the "presumption of access [is] indulged to the fullest extent not incompatible with the reasons for closure." *Newman*, 696 F.2d at 802. Therefore, the Tribune requests that the Motions be unsealed and no portion of the hearing be closed. However, if any portion of the hearing is closed, such closure must be as narrow as possible.

#### CONCLUSION

WHEREFORE, the Tribune respectfully requests that it be permitted to intervene in this matter, that the Motions to Withdraw be unsealed, and that the Court not conduct any portion of the hearing on the Motions to Withdraw *in camera* or *ex parte*.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 3.01(d), the Tribune respectfully requests oral argument on this motion and estimates that twenty (20) minutes will be required.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script, appearing to read "Gregg D. Thomas", is written over a horizontal line.

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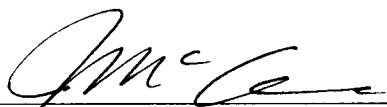
Attorneys for Intervenor

Media General Operations, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 26, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Terry A. Zitek  
Kevin T. Beck  
Stephen N. Bernstein  
M. Allison Guagliardo  
Bruce G. Howie  
William B. Moffitt  
Linda G. Moreno  
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